

RESOLUTION NO. 74792

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ
GRANTING A PLANNED DEVELOPMENT PERMIT TO CONSTRUCT A
322-ROOM HOTEL ON A VACANT SITE LOCATED AT THE
SOUTHWEST CORNER OF NORTH FIRST STREET AND SKYPORT
DRIVE (1717 N. FIRST STREET)**

FILE NO. PD08-062

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on October 10, 2008, an application (File No. PD08-062) was filed for a Planned Development Permit for the purpose of constructing a 322 room hotel located on that certain real property (hereinafter referred to as "subject property"), situate in the A(PD) Planned Development Zoning District, located on the southwest corner of N. First Street and Skyport Drive;

WHEREAS, the subject property is all that real property described in Exhibit "A," which exhibit is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, the City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing the City Council received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement and the City Planning Commission; and

WHEREAS, at said hearing, the City Council received in evidence, in addition to the testimony, reports and recommendations previously noted, a development plan for the subject property entitled, "Marriot Residence Inn + SpringHill Suites, 1717 N. First Street, San José, CA" dated January 20, 2009; said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

The City Council finds that the following are the relevant facts regarding this proposed project:

1. The project site has a designation of Industrial Park/Preferred Hotel Site on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located within the Rincon South Specific Plan within the Technology Park sub-area.
3. The project site is located within the North San José Area Development Policy area.
4. The project site is located in the A(PD) Planned Development Zoning District (File No. PDC08-037).
5. The subject site is 3.2 gross acres in size.
6. The project proposes to construct a 322 room hotel on a vacant site.
7. Pursuant to Section 15164 of the CEQA Guidelines, the City of San José has prepared an Addendum to an Environmental Impact Report (EIR) in connection with this project. The environmental impacts of this project were addressed by that Addendum together with a Final EIR entitled, "North San José Area Development Policies Update, for which findings were adopted by City Council Resolution No. 72768 in June of 2005.

FINDINGS

After investigation and hearing held pursuant to Chapter 13.32 of the San José Municipal Code, together with a consideration of the facts set forth hereinabove, the City Council finds as follows:

1. That the trees affected are of a size, type and condition, and are in such a location in such surroundings, that their removal would not significantly frustrate the purposes of Chapter 13.32; and
2. That the location of the trees with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question.

With respect to the Planned Development Permit finding requirements (Section 20.100.940 of the San José Municipal Code), the City Council finds that:

1. The Planned Development Permit, as issued, furthers the policies of the General Plan in that:

- a. The proposed office/R&D use is consistent with the Industrial Park/Preferred Hotel Site General Plan Land Use Designation, conforms to the Rincon South Specific Plan and the North San José Area Development Policy.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property in that:
 - a. As conditioned, the building location, setbacks, intensity, and parking spaces conforms to the approved General Development Plan.
3. The interrelationship between the orientation, location and elevations of the proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious in that:
 - a. The architectural elements of the proposed structures are integrated into a harmonious whole.
 - b. The project is in substantial conformance to the City's Commercial Design Guidelines.
4. The environmental impacts of the project including, but not limited to, noise, vibration, dust, drainage, erosion, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties in that:
 - a. A Final EIR entitled, "North San José Area Development Policies Update" and related findings were adopted by City Council Resolution No. 72768 in June of 2005, together with an Addendum to said Final EIR in connection with this proposed project.

Finally, based upon the above-stated findings and subject to the Conditions of Approval set forth below, the City Council approves, pursuant to Chapter 13.32 (Tree Removal Controls), and Part 8 of Chapter 20.100 (Planned Development Permits) of the San José Municipal Code, the construction of a 322 room hotel at the subject site in conformance with the Final EIR and Addendum.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Revised Plan Condition.** Within 60 days of the approval of this permit, the applicant shall submit revised plans to the satisfaction of the Director of Planning

and the Director of Public Works, through the major adjustment process, to remove all retaining walls associated with project entrances from the public right-of-way. Failure to apply for a major adjustment within this timeframe voids the permit approval.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance with Plans.** Construction and development shall conform to the approved development plans entitled, "Marriot Residence Inn + SpringHill Suites", dated January 20, 2009, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
6. **Permit Expiration.** This Planned Development Permit shall automatically expire two years from and after the effective date of this Permit, if within such two-year period, the proposed use of this site or the construction of buildings allowed or contemplated hereunder has not commenced pursuant to and in accordance with the provision of this Planned Development Permit. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with the applicable provisions of Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit in order to be effective.
7. **Revocation.** This Planned Development Permit is subject to revocation for a violation of any of its provisions or conditions.
8. **Planned Development Zoning District Effectuated.** Once this Planned Development Permit is accepted, only land uses consistent with the Planned

Development Zoning District effectuated by this Permit (Planning File No. PDC08-037) shall be allowed on the real property covered by that Planned Development Rezoning.

9. **Discretionary Review.** The Director of Planning, Building and Code Enforcement shall have the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San José Municipal Code.
10. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning through the Sign Permit Adjustment process.
11. **Enclosures/Screening.** Utility Structures shall be enclosed or screened with fencing and/or landscaping.
12. **Trash/Recycling and Storage.** The trash and recycling enclosures shall be covered and maintained in an orderly state. No outdoor storage is permitted.
13. **Storm Water Discharge.** The applicant shall conform to the Non-Point Source Control requirement for storm water discharge associated with construction activity as required by the State Water Resource Control Board. Contact the Regional Water Quality Control Board at (415) 286-0968 for further information.
14. **Storm Water Stenciling.** All drain inlets shall be labeled "No Dumping-Flows to Bay." Contact the City of San José, Environmental Services Department Watershed Protection Division, at (408) 945-3000 to obtain free stencils.
15. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
16. **Colors and Materials.** All building colors and materials are to be installed as specified on the approved plan set.
17. **Roof Equipment.** All roof equipment shall be screened from view.
18. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
19. **Lighting.** On-site exterior uncovered lighting shall use Low-Pressure Sodium fixtures and be designed, controlled, and maintained so that no light source is visible from outside of the property.
20. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff at (408) 277-5533 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.

21. **Water Efficiency.** Consider installation of high efficiency toilets (1.0 gal/flush) and/or dual flush toilets (0.8-1.1 gal/flush for liquids, 1.6 gal/flush for solids), high efficiency urinals (0.5 gal/flush or less), and electronic faucets. Contact the Santa Clara Valley Water District Water Conservation Hotline at (408) 265-2607 x2554 for information and availability of potential financial incentives for installing various types of water efficient appliances or equipment.
22. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
23. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
24. **Avigation Easement.** Prior to the issuance of Building Permits the owner must grant an avigation easement to the City of San José setting forth acceptance of elevation limits and aircraft noise impacts. Contact Cary Greene, Airport Planner, at (408) 501-7702 or cgreene@sjc.org to initiate the easement dedication process.
25. **Aviation.** The applicant is advised to submit the proposal to the FAA for an airspace safety determination even if the proposed building heights are below the lowest imaginary surface applicable to the site. Obtaining FAA no-hazard determinations for the buildings would expedite subsequent FAA review of any temporary cranes to be used during construction. The data on FAA Form 7460-1 should be prepared by a licensed civil engineer or surveyor, with coordinates in NAD83 and elevations in NAVD88. A separate form should be filed for each corner of the high-rise structure and any additional higher point. Prior to the issuance of Building Permits, the applicant must receive Determinations of No Hazard from the Federal Aviation Administration (FAA) and incorporate into the construction plans any conditions set forth by the FAA regarding obstruction marking or lighting. Also, prior to issuance of Occupancy Permits, the applicant should comply with any subsequent construction notification requirements set forth in the FAA no-hazard determinations.
26. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, PD08-062, shall be printed on all plans submitted to the Building Division.
 - b. *Avigation Easement.* Prior to the issuance of Building Permits an avigation easement shall be granted to the City of San José. See Condition 25.
 - c. *Aviation.* Prior to issuance of Building Permits the applicant shall satisfy aviation Condition 26.

- d. *Pre-construction Raptor and Burrowing Owl Survey.* Per Condition 31.e.1 and 2 pre-construction surveys shall be conducted.

27. Compliance with Fire Department Requirements. Prior to issuance of a Building Permit, the project proponent shall comply with all requirements of the Fire Department, including but not limited to the following:

- a. *Fire Hydrants.* Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by the Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
- b. *Medical Elevator.* At least one elevator shall be sized to accommodate a gurney that is 22 by 81-1/2 inches. The elevator entrance shall have a clear entrance of not less than 42 inches wide by 78 inches high. The elevator car shall have a minimum clear distance between walls or between walls not less than 80 inches by 65 inches.
- c. *Operable Windows.* Every sleeping room below the fourth story shall have at least one operable window or door approved for emergency escape or rescue that shall open directly into a public street, public alley, yard, or exit court. Such windows or doors shall be in accordance with the adopted Building Code, and accessible for Fire Dept. laddering operation. The maximum angle for laddering is 70deg. from horizontal. Show all pertaining details including landscaping and pavers in relation to rescue window operation. Laddering pads cannot be inside or on top of raised planters.

28. Public Works Clearance for Building Permit(s) or Map Approval. Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions (File No. 3-09469) to the satisfaction of the Director of Public Works. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits:

29. Construction Agreement: The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

30. Transportation:

- a. This project is required to pay the North San José Deficiency Plan fee. This fee is for the portion of the project that is consistent with the previously approved rezoning. The fee is \$362 per project trips.
- b. Additionally, an area wide traffic impact analysis was prepared as part of the North San José Area Development Policy, adopted June 2005. Traffic impacts were identified and resulted in an area wide traffic impact fees. This project is covered under the North San José EIR. The project is required to pay a traffic impact fee for traffic in excess of the previously approved rezoning.

- c. All fees must be paid prior to issuance of Public Works Clearance. Any credits for existing structures on site will be applied to the traffic impact fee consistent with the Policy and will be prorated with each building permits issued.

31. Grading/Geology:

- a. A grading permit is required prior to the issuance of a Public Works Clearance.
- b. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
- c. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
- d. The Project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.

32. Stormwater Runoff Pollution Control Measures: This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29.

- a. The project's Stormwater Control Plan and numeric sizing calculations require revisions.
- b. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- c. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating the all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.

33. Flood: Zone AO, Depth 1'

- a. Elevate the lowest floor more than 1 foot above the highest existing adjacent grade to the proposed structure or floodproof to the same elevation. For insurance rating purposes, the building's floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit.
- b. An Elevation Certificate (FEMA Form 81-31) based on construction drawings is required prior to issuance of a building permit. Consequently, an Elevation Certificate based on finished construction is required prior to issuance of an occupancy permit.
- c. If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 81-65) for each structure, floodproofing details, and if applicable, a Flood Emergency Operation Plan and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
- d. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage.

34. Sewage Fees: In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

35. Assessments: This project is located within Maintenance District 21 which maintains the enhanced landscaped median islands on Airport Parkway, Metro Drive and Skyport Drive within the boundaries of the district. Properties within the district pay for the maintenance through annual assessments placed on the County property tax bills which are adjusted annually by the Consumer Price Index. The 2008-09 assessment for APN 230-29-109 is \$1,332.96 and is calculated at approximately \$456 per acre. Future year assessments will continue to be collected through the County property tax bills.

36. Street Improvements:

- a. Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
- b. Dedication for street purposes along First Street and Skyport Drive.
- c. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- d. Install City standard interconnect conduit along Skyport Drive project frontage for portions of sidewalk that will be removed and replaced.
- e. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

37. **Complexity Surcharge:** Based on established criteria, the public improvements associated with this project have been rated medium complexity. An additional surcharge of 25% will be added to the Engineering & Inspection (E&I) fee collected at the street improvement stage.
38. **Sanitary:** The project is required to submit plan and profile of the sewer mains with lateral locations for final review and comment prior to construction.
39. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
40. **Street Trees:** Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects." Street trees shall be installed in the park strip along Skyport Drive frontage and in cut-outs at the back of curb along the North First Street frontage. Obtain a DOT street tree planting permit for any proposed street tree plantings. Contact the City Arborist at (408) 277-2756 for the designated street tree.
41. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
42. **Environmental Mitigation.** The environmental mitigation measures listed as part of the Environmental Impact Report, "Spieker Properties/Skyport Rezoning Project", File No. PDC99-060, which was certified for the subject project, are required and shall be included in the project. The project environmental mitigation is included in the findings adopted for the project in City Council Resolution No. 69421. Alternative mitigation that achieves an equivalent reduction in potentially significant impacts may be approved by the Director of Planning through a Planned Development Permit. Additionally, the project shall comply with the following mitigation measures:
43. **Air Quality - Regional and Local Air Quality.** The project shall implement measures identified by BAAQMD to reduce long-term contributions to regional and local emissions, which may include, but are not limited to, the following: Providing secure and conveniently placed bicycle parking and storage facilities at parks and other facilities;
- a. Using electric lawn and garden equipment for landscaping maintenance;
 - b. Constructing transit amenities such as bus turnouts/bus bulbs, benches, and shelters;
 - c. Providing direct, safe, attractive pedestrian access from project land uses to transit stops and adjacent development; and
 - d. Utilizing reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them

from the sun's rays and reduce local air temperature and cooling energy demand.

44. Air Quality – Construction-Related Impacts.

- a. Water all active construction areas at least twice daily.
- b. Water or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind.
- c. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- d. Sweep daily (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
- e. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- f. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
- g. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- h. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- i. Replant vegetation in disturbed areas as quickly as possible.

45. Biology – Tree Removal

- a. The proposed project shall replace trees removed at the following ratios:

Table 4.0-1 City Standard Tree Replacement Requirements			
Diameter of Tree to be Removed	Native	Non-Native	Minimum Size of Each Replacement Tree
18 inches or greater	5:1	4:1	24-inch box
12 – 18 inches	3:1	2:1	24-inch box
Less than 12 inches	1:1	1:1	15-gallon container
Notes: X:X = Tree replacement to tree loss ratio Trees greater than 18-inches in diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.			

- b. The species and exact number of trees to be planted on the site will be determined at the development permit stage, in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

- c. Replacement trees are to be above and beyond standard landscaping; required street trees do not count as replacement trees.
- d. In the event that the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building, and Code Enforcement, prior to removal of the subject trees:
 - i. The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.
 - ii. An alternative site(s) shall be identified for additional tree planting. Alternative sites may include neighborhood streets, local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement.
 - iii. A donation of \$300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting will be provided to the Planning Project Manager prior to removal of the subject trees.

46. Biology – Tree Protection

- a. Pre-construction Treatments
 - i. The project proponent shall retain an ISA (International Society of Arboriculture)-certified consulting arborist. The construction superintendent shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection.
 - ii. Fence all trees to be retained to completely enclose the TREE PROTECTION ZONE prior to demolition, grubbing or grading. Fences shall be 6 ft. chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction is completed.
 - iii. Prune trees to be preserved to clean the crown and to provide clearance. All pruning shall be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the ISA.
- b. During Construction
 - i. No grading, construction, demolition or other work shall occur within the TREE PROTECTION ZONE. Any modifications must be approved and monitored by the consulting arborist.
 - ii. Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the consulting arborist.
 - iii. Supplemental irrigation shall be applied as determined by the consulting arborist.

- iv. If injury should occur to any tree during construction, it shall be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
- v. No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the TREE PROTECTION ZONE.
- vi. Any additional tree pruning needed for clearance during construction must be performed or supervised by the consulting arborist and not by construction personnel.
- vii. As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near trees shall be designed to withstand differential displacement.

47. Cultural Resources – Prehistoric Resources

- a. As required by County ordinance, this project has incorporated the following guidelines. - Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
- b. In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius of the find in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California.
- c. A final report shall be submitted to the City's Environmental Principal Planner when mitigation is completed. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the City's Environmental Principal Planner.

48. Geology and Soils – On-site Soils

- a. The buildings would be designed and constructed in accordance with the design-level geotechnical investigation prepared for the project site, which identifies the

specific design features that will be required, including site preparation, compaction, trench excavations, foundation and subgrade design, drainage, and pavement design. The geotechnical investigation shall be reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance for the project.

- b. Standard grading and best management practices will be implemented to prevent substantial erosion and siltation during development of the site.
- c. To provide a more uniform bearing surface for at-grade buildings and other at-grade improvements, any undocumented fill will be removed and replaced by engineered fill.
- d. Backfill material that is undocumented will be removed and replaced by engineered fill. Some of the excavation backfill material extends below the design ground water depth of seven feet. Excavations will go approximately two feet below the ground surface level. The contractor shall use dewatering equipment during removal of the previous backfill and use construction basic fabric and crushed rock to stabilize the bottom of excavations extending near or below the ground water level.
- e. The project shall comply with the construction and design recommendations for earthwork, foundations, concrete slabs and pedestrian pavements, vehicular pavements, and conventional retaining walls that are provided in the geotechnical report for the project.

49. Geology and Soils – Seismicity and Seismic Hazards

- a. The project shall be designed and constructed in conformance with the Uniform Building Code guidelines for Seismic Zone 4 to avoid or minimize potential damage from seismic shaking and seismic-related hazards on the site.

50. Geology and Soils – Groundwater

- a. Contractors should be made aware of the moisture sensitivity of the underlying soils that can result in subgrade instability, temporary construction dewatering, and/or potential compaction difficulties. If the subgrade becomes unstable during grading or trench excavations, additional stabilization techniques may be required prior to fill placement and/or compaction. Subgrade stabilization techniques may include the use of geotechnical stabilization fabric or grid, crushed rock, or chemical treatment. Evaluation of conditions in the field at the time of construction would determine the type, level and extent of mitigation alternatives required. Excavated materials being reused for fill will likely require additional drying out or blending with dryer material prior to reuse.

51. Hazards and Hazardous Materials – Former Underground Storage Tanks

- a. A Site Management Plan (SMP) will be prepared to establish management practices for handling impacted soil and/or fill material that may be encountered during site development and/or future soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of

a health and safety plan by an industrial hygienist; notification procedures if previously undiscovered structures, significantly impacted soil, or free fuel product is encountered during construction; sampling and laboratory analyses of excess soil requiring disposal at an appropriate waste disposal facility; soil stockpiling protocols; and protocols to manage ground water that may be encountered during trenching and/or subsurface excavation activities. The SMP will also include protocols for the excavation and appropriate on-site or off-site disposition of pesticide and metal-impacted fill material encountered in the area of test pits TP-3 and TP-11. The SMPs will be submitted to the Planning Department for review and approval prior to issuance of grading permits. In addition, prior to site development, a copy of the SMP will be forwarded to the Santa Clara County Environmental Health Department.

52. Hazards and Hazardous Materials – Hydraulic Lifts

- a. If a hydraulic lift or other subsurface equipment is encountered during site development activities, the equipment will require special handling and disposal. The SMP will describe protocols to be performed if such equipment is discovered during construction, including notification, field oversight by an environmental consultant, appropriate removal procedures, and verification sampling.

53. Hazards and Hazardous Materials – Asbestos

- a. Any asbestos-impacted fill material off-hauled will be disposed at an appropriately licensed off-site waste disposal facility. Prior to disturbing such material, an asbestos and dust mitigation plan (ADMP) will be prepared and submitted to the Bay Area Air Quality Management District (BAAQMD) for their review and approval. The provisions of the approved ADMP will be implemented at the beginning and maintained throughout the duration of site development. The ADMP will include track-out prevention and control measures, controls for disturbed surface areas and storage piles, on-site controls for earth moving activities, and controls for off-site transport. The ADMP may also include air monitoring if required by the BAAQMD.

54. Hydrology and Water Quality – Flooding

- a. The finished floor of structures shall be located one foot above (43.5 feet) the highest existing curb on the site (42.5 feet) to avoid 100-year storm flood levels of one to two feet.

55. Hydrology and Water Quality – Water Quality Construction

- a. Comply with the SCVURPPP NPDES General Construction Activity Stormwater Permit issued to the City of San José and other co-permittees of the SCVURPPP, and shall include measures to control pollutants discharged into the stormwater system. Future activities that require a permit from the City of San José will be evaluated for BMPs including, but not limited to the following:
 - i. Preclude non-stormwater discharges to the stormwater system.

- ii. Incorporate effective, site-specific Best Management Practices for erosion and sediment control during the construction and post-construction periods.
- iii. Cover soil, equipment, and supplies that could contribute pollution prior to rainfall events or monitor runoff.
- iv. Perform monitoring of discharges to the stormwater system.
- v. The project will comply with the City's Grading Ordinance.

56. Noise – Short-term Construction Impacts

- a. Construction-related activities shall be limited to the hours of 7 AM to 6 PM Monday through Friday and 8 AM to 5 PM. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance to adjacent uses.
- b. Equip all internal combustion engine driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- c. Locate stationary noise generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area.
- d. Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- e. The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with the adjacent noise sensitive facilities so that construction activities can be scheduled to minimize noise disturbance.
- f. Designate a "disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g. starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem be implemented. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

57. Noise – Interior Noise

- a. Per the requirements of the 2007 California Building Code, project-design-specific acoustical analyses will be conducted to confirm that interior noise levels will be reduced to 45 dBA DNL or lower. The specific determination of what noise insulation treatments are necessary will be made on a unit-by-unit basis. Results of the analysis, including the description of the necessary noise control treatments, will be submitted to the City along with the building plans and approved prior to issuance of a building permit.
- b. Building sound insulation requirements will include the provision of forced-air mechanical ventilation for units proposed in noise environments exceeding 60

dBA DNL, so that windows could be kept closed at the occupants' discretion to control noise.

- c. If required based on the acoustical analysis, special building techniques (e.g., sound-rated windows and building facade treatments) will be included to maintain interior noise levels at or below acceptable levels. These treatments would include, but are not limited to, sound rated windows and doors, sound rated wall constructions, acoustical caulking, protected ventilation openings, etc. Preliminary calculations indicate that hotel rooms nearest North First Street would require sound rated windows and doors with ratings ranging from STC 35-38 to assure that the 45 dBA DNL indoor standard is met. Rooms nearest Skyport Drive would likely require sound rated windows and doors with ratings ranging from STC 32-35.

58. Permit Posting. Prior to commencement of and during removal of any ordinance size tree pursuant to this Permit, the applicant shall post on the site, or cause to be posted, a copy of this validated Permit in conformance with the following:

- a. The copy of the permit shall be a minimum size of 8.5 by 11.0 inches; shall be posted at each public street frontage within 2 feet of the public sidewalk or right-of-way; and shall be posted in such a manner that the permit is readable from the public sidewalk or right-of-way; or
- b. If the site does not have a public street frontage, a copy of the permit shall be posted at a location where the permit is readable from a common access driveway or roadway.
- c. Presentation of Permit. During removal of any ordinance-size tree pursuant to this permit, the applicant shall maintain the validated permit on the site and present it immediately upon request by the Director of Planning, Building, and Code Enforcement, Police Officers, or their designee.

EFFECTIVE DATE

The effective date of this Permit shall be the effective date of Planned Development Zoning PDC08-037 and shall be no earlier than the effective date of said Planned Development Zoning PDC08-037.

Approved and issued this 10th day of February, 2009 by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, OLIVERIO, PYLE.

NOES: NONE.

ABSENT: CHIRCO, NGUYEN; REED.

DISQUALIFIED: NONE.

NANCY PYLE
Vice Mayor Pro Tem

ATTEST:

LEE PRICE, MMC
City Clerk